

CHALOS & CO, P.C.  
*Attorneys for Plaintiff*  
Katherine N. Christodoulatos  
55 Hamilton Avenue  
Oyster Bay, NY 11771  
Tel: (516) 714-4300

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

DAVID OPPENHEIMER & CO.,

Plaintiff,

v.

ASSOCIATES WAREHOUSING, INC.,  
WILLIAM PARKER ASSOCIATES, INC. and  
U.S. CUSTOMS AND BORDER  
PROTECTION,

Defendants.

NO.

VERIFIED COMPLAINT

Plaintiff, DAVID OPPENHEIMER & CO. (“OPPENHEIMER”) by and through its attorneys, CHALOS & CO, P.C., states pursuant to L.Civ.R. 10.1 that the principal place of business of OPPENHEIMER is 11 Burbridge Street Coquitlam, B.C. V3K 7B2, Canada; the principal place of business of Defendant ASSOCIATES WAREHOUSING, INC. (“ASSOCIATES”) is 2845 East Westmoreland Street, Philadelphia, Pennsylvania 19134; the principal place of business of Defendant WILLIAM PARKER ASSOCIATES, INC. (“PARKER”) is 2845 East Westmoreland Street, Philadelphia, Pennsylvania 19134; and Defendant U.S. CUSTOMS AND BORDER PROTECTION (“CBP”) is a federal agency with an office at 1100 Raymond Boulevard, Newark, NJ 07102 (hereinafter collectively referred to as “Defendants”). As for its Verified Complaint against Defendants, Plaintiff alleges and pleads as follows:

**I. PARTIES**

1. Plaintiff is a Canada corporation with a principal place of business at: 11 Burbridge Street Coquitlam, B.C. V3K 7B2, Canada, and was the owner of a consignment of 2,160 boxes of fresh grapes laden on board the Motor Vessel MAERSK BRANI, as described in more detail below.

2. At and during all the times hereinafter mentioned, Defendant ASSOCIATES, was and is a Pennsylvania corporation with an office and place of business located at 2845 East Westmoreland Street, Philadelphia, Pennsylvania 19134. Defendant is, and at all relevant times, was doing business in this jurisdiction directly and/or through an agent.

3. At and during all the times hereinafter mentioned, Defendant PARKER, was and is a Pennsylvania corporation with an office and place of business located at 2845 East Westmoreland Street, Philadelphia, Pennsylvania 19134. Defendant is, and at all relevant times, was doing business in this jurisdiction directly and/or through an agent.

4. At and during all the times hereinafter mentioned, Defendant CBP was and is a federal agency under the auspices of the Department of Homeland Security (“DHS”), with an office at 1100 Raymond Boulevard, Newark, NJ 07102.

**II . JURISDICTION AND VENUE**

5. This action arises from the breach of a maritime contract, and comprises an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This action falls under this Court’s admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333.

6. This Court also has pendent jurisdiction over all state law claims asserted by the Plaintiff.

7. Venue is proper in this District under 28 U.S.C. § 1391(b)(3) because the Defendants are subject to the Court's personal jurisdiction.

### **III. FACTS AND UNDERLYING CLAIMS**

8. On or about November 8, 2011, a consignment consisting of 2,160 boxes of fresh grapes ("the Cargo"), then being in good order and condition, were delivered to the M/V JENS MAERSK and the shipper and/or its agents in Callao, Peru for transportation to Philadelphia, United States in consideration of an agreed upon freight, pursuant to bill of lading numbers 862893954.

9. Thereafter, the consignment having been loaded aboard the M/V JENS MAERSK, Voyage No. 1114, the vessel sailed from the port of Callao, Peru.

10. The shipment was transshipped at the Port of Balboa, Peru, and thereafter, was loaded onto the M/V MAERSK BRANI at the port of Manzanillo, Peru.

11. The M/V MAERSK BRANI arrived in Philadelphia, United States, on or about November 29, 2011.

12. Upon discharge of the consignment at Philadelphia, the Cargo of grapes onboard the M/V MAERSK BRANI was randomly selected by Defendant CBP for an intensive inspection.

13. Accordingly, on December 2, 2011, the Cargo was diverted to a container examination service location of Defendants ASSOCIATES and PARKER, for the CBP inspection.

14. During the inspection, the Defendants unloaded each carton (in which the Cargo was held) off of the pallets, and roughly handled the Cargo.

15. When the cartons were placed back into the container, they could not be stacked on pallets, as they had been during shipment, as a result of the damages sustained during the inspection.

16. A survey of the Cargo was conducted by Philadelphia Cargo-Claim Consultants, wherein the grapes were found to be wet and sticky, scarred, shattered, and crushed, with cap stems not firmly attached. As a result, the grapes failed to grade U.S. No. 1 account condition.

17. The surveyor determined that the Defendants' mishandling of the cartons during the inspection caused this damage to the Cargo.

18. As a result of the damages to the Cargo, the Plaintiff has sustained a loss in the amount of USD 23,421.47, plus interest, costs and disbursements.

19. Plaintiff filed a "Claim for Damage, Injury, or Death" with Defendant CBP on August 3, 2012. *A copy of this claim is attached hereto as Exhibit 1.*

20. On July 11, 2013, CBP issued a decision rejecting Plaintiff's claim on the basis that CBP is exempt from liability under the Federal Tort Claims Act. *A copy of the CBP's decision is attached hereto as Exhibit 2.*

**AS AND FOR A FIRST CAUSE OF ACTION –  
NEGLIGENCE**

21. Plaintiff repeats and realleges each and every allegation set forth above in Paragraphs 1 through 20, as if fully stated here.

22. It was reasonably foreseeable that in the event Defendants failed to properly perform their obligations within accepted standards, that injury would result, economic or otherwise.

23. Plaintiff was a foreseeable party who could suffer injury as a result of the negligent or improper performance of the Defendants' services.

24. As such, Defendants owed a duty of care to Plaintiff to perform the services each Defendant undertook.

25. Defendants breached their duty of care to Plaintiff by failing to properly handle and secure the Cargo, and to re-load the Cargo into the container.

26. Following the Defendants' inspection, the Cargo sustained significant damages.

27. A survey of the Cargo performed after the inspection found the grapes to be wet, sticky, scarred, shattered, and crushed, with cap stems not firmly attached.

28. This damage to the cargo was a direct and proximate result of Defendants' negligence and willful failure to properly handle and secure the Cargo.

29. As a result of the foregoing, Plaintiff has sustained a loss of no less than USD 23,421.47, plus interest, costs and disbursements.

**AS AND FOR A SECOND CAUSE OF ACTION –  
BREACH OF IMPLIED WARRANTY OF WORKMANLIKE SERVICE**

30. Plaintiff repeats and realleges each and every allegation set forth above in Paragraphs 1 through 29, as if fully stated here.

31. The Defendants failed to ensure that the Cargo was handled and secured in the container in a workmanlike manner, causing extensive damages to the Cargo.

32. As a result of Defendants' actions or omissions, Plaintiff incurred damages of no less than USD 23,421.47, plus interest, costs and disbursements.

**AS AND FOR A THIRD CAUSE OF ACTION –  
BREACH OF BAILMENT OBLIGATIONS**

33. Plaintiff repeats and realleges each and every allegation set forth above in Paragraphs 1 through 32, as if fully stated here.

34. The Defendants were acting as bailees of the Cargo at the time the damages were sustained. The Defendants were thereby, or through their contractors, agents, or sub-bailees, bailees who warranted and had a legal duty to safely keep, care for and deliver the Cargo in the same condition as when entrusted to them and to perform their services as bailees or to ensure that those services were performed with reasonable care and in a non-negligent and workmanlike manner.

35. The Defendants breached their bailment obligations and negligently failed to deliver the Cargo to Plaintiff and/or Plaintiff's agents, in as good condition as when entrusted to them.

36. As a result of the foregoing, the Defendants caused damages to plaintiff in an amount of no less than USD 23,421.47, plus interest, costs and disbursements.

**WHEREFORE**, Plaintiff prays:

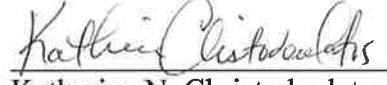
1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
2. That Judgment may be entered in favor of Plaintiff against Defendants for the amount of Plaintiff's damages, together with interest and costs and the disbursements of this action;
3. That this Court will grant Plaintiff such other and further relief as may be just and proper.

Dated: Oyster Bay, New York  
December 20, 2013

Respectfully submitted,

CHALOS & CO, P.C.  
*Attorneys for Plaintiff*  
DAVID OPPENHEIMER & CO.

By:

  
Katherine N. Christodoulatos (KC-1226)  
55 Hamilton Avenue  
Oyster Bay, New York 11771  
Tel: (516) 714-4300  
Fax: (516) 750-9051  
E-mail: kchristodoulatos@chaloslaw.com

**LOCAL RULE 11.2 CERTIFICATION**

Pursuant to Local Civil Rule 11.2, DAVID OPPENHEIMER & CO, certifies that the matter in controversy in this action is not the subject of any other action filed in any other court and is not the subject of any pending arbitration or administrative proceedings.

Dated: Oyster Bay, New York  
December 20, 2013

Respectfully submitted,

CHALOS & CO, P.C.  
*Attorneys for Plaintiff*  
DAVID OPPENHEIMER & CO.

By:   
Katherine N. Christodoulatos (KC-1226)  
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U.S. CUSTOMS AND BORDER  
PROTECTION,

Defendants.

NO.

**VERIFICATION OF COMPLAINT**

Pursuant to 28 U.S.C. §1746, KATHERINE N. CHRISTODOULATOS, Esq., declares under the penalty of perjury:

1. I am a Member of the law firm of CHALOS & CO, P.C., counsel for the Plaintiff, DAVID OPPENHEIMER & CO.
2. I have read the foregoing Verified Complaint and know the contents thereof; and
3. I believe the matters to be true based on documents and information obtained from employees and representatives of the Plaintiff through its agents, underwriters and attorneys.
4. The reason this verification is made by the undersigned, and not made by Plaintiff, is that Plaintiff is a foreign corporation or other business entity, no officer or director of which is presently within this District. I am authorized to make this verification.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Oyster Bay, New York  
December 20, 2013

CHALOS & CO, P.C.  
Attorneys for Plaintiff  
DAVID OPPENHEIMER & CO.

By:

Katherine Christodoulatos  
Katherine N. Christodoulatos (KC-1226)  
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Oyster Bay, New York 11771  
Tel: (516) 714-4300  
Fax: (516) 750-9051  
E-mail: kchristodoulatos@chaloslaw.com

## EXHIBIT 1



**INSURANCE COVERAGE**

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance?  Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number.  No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible?  Yes  No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance?  Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code).  No

**INSTRUCTIONS**

**Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.**

**Complete all items - Insert the word NONE where applicable.**

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

**Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.**

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

**PRIVACY ACT NOTICE**

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

**PAPERWORK REDUCTION ACT NOTICE**

This notice is **solely** for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.


**IQF DEL PERU S.A.**

 AV. ALBERTO DEL CAMPO 406 - SAN ISIDRO - LIMA - PERU  
 TELF: 51-1-264-1014 FAX: 51-1-204-0417

R.U.C. N° 20100032709

**FACTURA  
INVOICE**

001- 0011662

A(To)

 DAVID OPPENHEIMER CO.  
 262 Chapman Road  
 Bellevue Building - Suite 204  
 Newark, DE 19702 U.S.A.
TERMINOS  
TERMS

FOB CALLAO

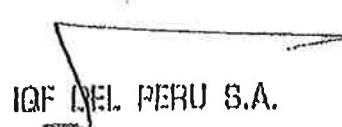
LIMA

7 de Noviembre del 2011  
November 7, 2011VAPOR  
VESSEL

JENS KAERSK 1114

CONTRATO N°  
YOUR CONTRACTQUILLI  
GUIDEN

012-004018

CANTIDAD QUANTITY	CODIGO CODE	DESCRIPCION DESCRIPTION	EMPAQUE PACKING	PRECIO PRICE	MONTO AMOUNT
2,160 Boxes	40360794 UVA FRESCA FRESH GRAPE		1 x 8.20 kg	US\$ 30.0000	US\$ 64,800.00
2,160 Boxes		TOTAL VALOR FOB CALLAO / TOTAL FOB CALLAO VALUE		US\$ 64,800.00	
SO/1: SESENTA Y CUATRO MIL DOSCIENTOS Y 00/100 DOLARES AMERICANOS CARDO HAS NOT BEEN REFUSED ENTRY BY ANY OTHER COUNTRY PRODUCTO DE PERU / PRODUCT OF PERU					
					

S/11515/PATO/CARGEN/HOSTENTIA/RETENCION/1006177254/Sellos Oficiales 015505 al 015506 Aut. Nro. 20100032709

 PESO BRUTO  
GROSS WEIGHT : 20,130.00 kg 44,378.31 lb  
 PESO NETO  
NETWEIGHT : 17,712.00 kg 39,047.62 lb  
 CANTIDAD  
QUANTITY : 2,160 Cajas (20 pallets)  
 P. ARANCELARIA : 08.06.10.00.00
REG. EXPOR. 0019-08-16  
FLAVIO R. VASQUEZ VILLELA

ADQUIRIENTE O USUARIO



PACKING LIST:	03
VESSEL NAME:	JENS MAERSK 1114
DATE OF LOADING	11/07/2011
ARRIVAL DATE:	11/27/2011
PORT OF ARRIVAL:	PHILADELPHIA
CONTENEDOR :	MNUU-001661-7

COMODITY	VARIETY	PACK STYLE	SIZES	LABEL	N BOXES	
FRESH GRAPES	FLAME	ZIP-BAGS	600	OPPENHEIMER	216	
FRESH GRAPES	FLAME	ZIP-BAGS	700	OPPENHEIMER	1728	
FRESH GRAPES	FLAME	ZIP-BAGS	800	OPPENHEIMER	216	
					2,160	

IQF DEL PERU S.A.  
[Handwritten signature box]



**SENASA**  
Servicio Nacional de Sanidad Agraria  
**PERU**

CERTIFICADO FITOSANITARIO  
PHYTOSANITARY CERTIFICATE

Nº 0389678

ORGANIZACIÓN DE PROTECCIÓN FITOSANITARIA DEL  
PLANT PROTECTION ORGANIZATION OF  
PERU

A : ORGANIZACIÓN DE PROTECCIÓN FITOSANITARIA  
TO : PLANT PROTECTION ORGANIZATION  
DE(OF) : USA

DESCRIPCIÓN DEL ENVÍO - DESCRIPTION OF CONSIGNMENT

Nombre y dirección del exportador - Name and address of exporter <b>IQF del Perú S.A.</b> <i>Av. Alberto del Campo N° 405 San Isidro Lima.</i>		
Nombre y dirección declarados del destinatario - Declared name and address of consignee <b>David Oppenheimer C.P.</b> <i>202 Chapman Road, Bellevue Blvd, Suite 204 New York, NY 10001 USA</i>		
Número y descripción de bultos - Number and description of packages <i>2160 Cajas.</i>	Marcas distintivas - Distinguishing marks <i>Oppenheimer</i>	
Lugar de Origen - Place of Origin <i>Ica - Peru</i>	Modos de transporte declarados Declared means of conveyance <i>Marítimo</i>	Punto de entrada declarado Declared point of entry <i>Philadelphia</i>
Cantidad declarada y nombre del Producto. Name of product and declared quantity <i>18.212 Kg de Vitis Vinifera Plantas Secadoras.</i>	Nombre botánico de las plantas Botanical name of plants <i>Vitis vinifera</i>	

Por la presente se certifica que las plantas, productos vegetales y otros artículos requeridos descritos aquí se han inspeccionado y/o sometido a ensayo de acuerdo con los procedimientos establecidos y se considera que cumplen con los requisitos establecidos para su introducción al país destinatario. Se hace ésta la inspección para satisfacer las normas físicas y sanitarias establecidas en el acuerdo entre las autoridades competentes respectivas.

This is to certify that the plants, plant products or other required articles described herein above have been inspected and/or tested according to the official official procedures and no considered to be free from the requirements made by the inspecting exporting party and thus with the physical sanitary requirements of the importing country party, including those for inspection purposes, including the relevant competent authorities.

TRATAMIENTO DE DÉSINFESTACIÓN O DEBINFECIÓN - DISINFESTATION AND/OR DISINFECTION TREATMENT

Fecha - Date <i>11-04-2011</i>	Tratamiento - Treatment <i>Incubado o/o Cold Treatment.</i>
Producto químico (Ingrediente activo) - Chemical Product (active ingredient)	
Duración y temperatura - Duration and temperature <i>—</i>	Concentración - Concentration <i>—</i>

DECLARACIÓN ADICIONAL - ADDITIONAL DECLARATION

Consignante o/a Empaquetado con el número de control 7104-11-8 Contenedor MNBV 004661-Y Pintado SENASA 344487
---

INFORMACIÓN ADICIONAL - ADDITIONAL INFORMATION

Nombre del funcionario autorizado Name of authorized official <i>Jesús Jorge Coloma Serratos.</i>	MINISTERIO DE AGRICULTURA SERVICIO NACIONAL DE SANIDAD AGRARIA BERMIDA DIRECCIÓN GENERAL DE INSPECCIÓN LUGAR Y FECHA DE EXPEDICIÓN Place and date of issuance <i>Ica 07 de Noviembre del 2011</i>
EL SENASA, sus funcionarios y representantes declinan toda responsabilidad financiera resultante de este certificado.	
Este certificado ha sido adoptado por el Perú por Resolución Legislativa N° 21176 concordante a la Convención Internacional de Protección Fitosanitaria de la FAO	





# Philadelphia Cargo-Claim Consultants



\* Marine Consultants \* Cargo Surveyors \* Loss Adjusters \* Recovery Specialists \*  
 242 N. Keswick Ave. Email: philly-cargo@comcast.net  
 Glenside, PA 19038 Phone: (215) 572-1030  
 Fax (215) 572-1031

SURVEY REPORT NO.: 08-1212

MARSH CLAIM NO. : 12-1-711369-2

*This report is issued for use in connection with the claim against the parties responsible, but does not imply that the loss is recoverable from underwriters.*

*This must depend upon the terms of the Policy of Insurance.*

<b>1a.</b> <i>Supplier of the goods</i>	<b>a.</b> IQF del Peru S.A.
<b>1b.</b> <i>Name of consignee of goods specified in annexed schedule</i>	<b>b.</b> Oppenheimer
<b>1c.</b> <i>Name of applicant for survey</i>	<b>c.</b> Oppenheimer
<b>1d.</b> <i>If goods transshipped, name(s) of original carrying vessel(s) and of transshipment port(s)</i>	<b>d.</b> Jens Maersk V. 1114 Balboa, Panamá Manzanillo, Panama
<b>1e.</b> <i>Name of vessel from which goods discharged</i>	<b>e.</b> Maersk Brani V. 138N
<b>1f.</b> <i>Port at which goods discharged</i>	<b>f.</b> Philadelphia, PA
<b>1g.</b> <i>Date of arrival of vessel at port of discharge</i>	<b>g.</b> November 6, 2011
<hr/>	
<b>2a.</b> <i>Was clean receipt given to the vessel on discharge?</i>	<b>a.</b> N/A
<b>2b.</b> <i>If not, then state exceptions noted on receipt</i>	<b>b.</b>
<b>2c.</b> <i>Were the goods accepted by USDA by first rate?</i>	<b>c.</b> 825 of the cases were inspected and failed to grade US No. 1.
<b>2d.</b> <i>If not, then state exceptions noted on receipt</i>	<b>d.</b> Wet & Sticky, shatter, crushed berries, capstems and decay
<hr/>	
<b>3a.</b> <i>Date of delivery to place where survey held</i>	<b>a.</b> December 9, 2011
<b>3b.</b> <i>Delay, if any, in taking delivery stated by consignee to be due to</i>	<b>b.</b> No delay
<hr/>	
<b>4a.</b> <i>External condition of packages when delivered to place where survey held, as reported by consignee</i>	<b>a.</b> Sound



Philadelphia Cargo-Claim Consultants  
philly-cargo@comcast.net

Jens Maersk  
Maersk Brant  
Oppenheimer

08-1212

<b>4b.</b>	<b>Was a clean receipt given at the time of delivery? If not, state exceptions noted on receipt</b>	b.	N/A
<b>4c.</b>	<b>External condition of packages at time of survey</b>	c	Sound
<b>5a.</b>	<b>Date of application for survey</b>	a.	December 9, 2011
<b>5b.</b>	<b>Performed by</b>	b.	Ray McAlonan
<b>6a.</b>	<b>Delay, if any, in applying for survey due to</b>	a.	N/A.
<b>6b.</b>	<b>If survey not held in consignees' premises, state consignees' reason for not taking delivery</b>	b.	
<b>7a.</b>	<b>Date and place of survey</b>	a.	December 12, 2011 Manfredi Cold Storage
<b>8a.</b>	<b>Nature of packing</b>	a.	Standard
<b>9a.</b>	<b>Description of loss/damage</b>	a.	Physical damage sustained during US Customs inspection
<b>9b.</b>	<b>Cause, after examination, attributed by the surveyor to (The surveyor should state, if possible, the circumstances in which loss/damage above referred to occurred)</b>	b.	See Addendum
<b>10a.</b>	<b>Is underwriters' agent aware of any casualty suffered by the carrying vessel to which the loss/damage found might be attributable? If so, brief details should be given.</b>	a.	No
<b>11a.</b>	<b>Has the shipping invoice been inspected?</b>	a.	Yes
<b>12a.</b>	<b>On the date of arrival the sound market value of the damaged goods amounted to (State whether Duty Paid or in Bond).</b>	a.	USDA SMV on date of arrival: \$47,520.00



Philadelphia Cargo-Claim Consultants  
philly-cargo@comcast.net

Jens Maersk  
Maersk Brant  
Oppenheimer

08-1212

<b>12b.</b> <i>On the date of compromise or sale the sound market value of the damaged goods amounted to (state whether duty paid or in bond)</i>	<b>b.</b> USDA SMV on date of delivery/survey: \$49,680.00
<hr/>	
<b>13a.</b> <i>In the interest of all parties concerned, the damages has been assessed by way of compromise, and an allowance on arrived sound market value has been agreed amounting to</i>	<b>a.</b> N/A
<hr/>	
<b>14a.</b> <i>No compromise being agreed with consignee, the damaged goods were with our approval sold by public sale or private tender for account of consignee.</i>	<b>a.</b>  Residual Value:  \$26,758.05  <i>The proceeds as per attached account sales, amounted to (If for any reason the proceeds have not been taken over by the consignees, underwriter's agent should explain why).</i>
<hr/>	
<b>15a.</b> <i>Duties payable on the goods in sound state are</i>	<b>a.</b>
<hr/>	
<b>16a.</b> <i>Has original/copy Bill of Lading been inspected?</i>	<b>a.</b> Photocopy enclosed
<hr/>	
<b>16b.</b> <i>What is the reference therein to the condition of the goods?</i>	<b>b.</b> TEMPERATURE: -0.5C
<hr/>	
<b>17a.</b> <i>Has consignee given notice of loss/damage to or made claim against?</i>	<b>a.</b> Yes
<hr/>	
<b>17b.</b> <i>If not, what does consignee give as reason? If notice given or claim made state:</i>	<b>b.</b>
<hr/>	
<b>17c.</b> <i>Date on which consignee state good delivered into his custody</i>	<b>c.</b> December 9, 2011
<hr/>	
<b>17d.</b> <i>Date on which consignee gave notice of loss/damage or made claim and to whom addressed</i>	<b>d.</b> December 9, 2011 Maersk Line and Associates Warehousing Inc.
<hr/>	



Philadelphia Cargo-Claim Consultants  
philly.cargo@comcast.net

Jens Maersk  
Maersk Brani  
Oppenheimer

08-1212

- 17e. **Summary of reply, if any, received (correspondence with carriers/bailees to be attached if available).** e. We are not aware of any response
- 17f. **Was a survey by carriers/bailees and consignee held?** f. No.

- 18a. **Further Remarks:** a.

#### SCHEDULE

##### MARKS AND NUMBERS:

Bill of Lading: MAEU862893954  
Container: MNBU0046617  
2,160 boxes

##### NO. OF PACKAGES:

2,040 cases

##### QUANTITIES SOUND:

0 cases sold for prices above SMV

##### QUANTITIES MISSING OR DAMAGED:

2,160 cases sold at prices below SMV or disposed of without residual value

#### ADDENDUM

On behalf of the underwriter for Oppenheimer, we were notified of a potential claim on December 9, 2011.

We were notified that the shipment was received in damaged condition as a result of being roughly handled during an Intensive CBP EXAM.

The container had been randomly chosen by US Customs and Border Patrol for an Intensive Inspection. The container was therefore diverted on December 2 to a Container Examination Service location, Associates Warehousing, for the CBP inspection.

During the Customs and Border Protection (CBP) inspection, the workers unloaded each carton off of the pallets. The CBP personnel manhandled the cartons and left a portion of the cargo in disarray. After the inspection the cartons were put back in the container but not stacked on pallets. The cartons and contents were unable to be palletized as intended due to the extent of the damages sustained.

On December 8 the container was returned to the terminal (PAMT). On December 9 the container was transported to Manfredi Cold Storage.

Both Maersk Line and Associates Warehousing were notified and invited to a joint

\* Marine Consultants \* Cargo Surveyors \* Loss Adjusters \* Recovery Specialists \*



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survey. Neither was in attendance during our inspection.

We inspected the subject shipment above which was discharged from the Maersk Brani and was then detained by the USDA.

The cartons were well constructed with double-wall sides and reinforced corners.

They were mishandled and stacked very poorly causing cartons to become crushed, torn, and compacted which also affected the product.

We recommended that Oppenheimer obtain a USDA Inspection to confirm the damages sighted.

We have been provided this USDA Inspection Certificate which shows that the grapes failed to grade U.S. No. 1 account condition. The lot failed due to: wet and sticky, scarred, shattered, and crushed berries, cap stems were not firmly attached,

We were informed that 825 cases were significantly affected and were to be sold at salvage value. The remaining 1,335 cases were reportedly received without exception.

We have since been submitted a claim in the amount of \$25,587.52. The loss amount was calculated using the SMVs at the time of delivery. The claim amount also includes additional costs which are being submitted for consideration.

We have adjusted the loss by calculating the loss using the SMVs on the date of arrival. We have calculated the loss at \$23,421.47.



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Maersk Brani  
Oppenheimer

08-1212

#### LOSS CALCULATION

##### USDA SMVs on date of arrival

MNBU0046617

Size	Cases	SMV	Sales	Total SMV	Orig. Sales	Credits	Actual Sales	Loss
900	157	\$24.00	\$21.42	\$3,768.00	\$3,363.10	\$170.00	\$3,193.10	\$574.90
700	1529	\$22.00	\$15.17	\$33,638.00	\$23,188.89	\$0.00	\$23,188.89	\$10,449.11
500	216	\$20.00	\$1.74	\$4,320.00	\$376.06	\$0.00	\$376.06	\$3,943.94
900	59	\$24.00	\$0.00	\$1,416.00	\$0.00	\$0.00	\$0.00	\$1,416.00
700	199	\$22.00	\$0.00	\$4,378.00	\$0.00	\$0.00	\$0.00	\$4,378.00
	2160			\$47,520.00	\$26,928.05	\$170.00	\$26,758.05	\$20,761.95

##### Additional Costs

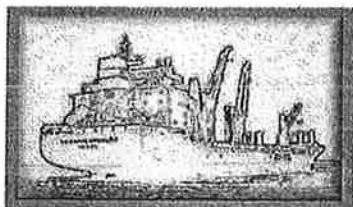
USDA	\$180.04
Warehouse Pallets	\$61.80
Customs Exam	\$2,417.68
<b>Total Costs</b>	<b>\$2,659.52</b>
 <b>Total Loss</b>	 <b>\$23,421.47</b>

This loss is fair and reasonable for the extensive damages caused during the CBP inspection.

#### **LIABILITY CLAUSE**

*These findings are based upon the facts presently known and believed to be pertinent, considering the scope of our involvement--as defined by the parameters detailed or implied in the request for our involvement and/or as protracted and developed since prior assignments with our principles to this assignment. This report is believed to be complete inasmuch as-is the information provided in conjunction with its completion, but because our perception of the pertinent facts could alter with consideration of additional information or unconsidered circumstances governing their contextual significance, the right to amend or revise this report is reserved.*

*Unless otherwise indicated, the completion of this report and the events leading thereto occurred without knowledge of policy terms and conditions--specific to this consignment. As such, our survey findings and final recommendations are submitted without prejudice of claim rights arising governed by the applicable policy terms.*



Philadelphia Cargo-Claims Consultants

Dennis Keeny

Joseph Smith

 <b>MAERSK LINE</b> <b>1QF DEL PERU SA</b> <b>SHIPPER</b> <b>AV ALBERTO DEL CAMPO 405</b> <b>SAN ISIDRO, CC-L LIMA, PERU PE</b>		<b>NON-NEGOTIABLE WAYBILL</b> <b>SC# MABU</b> <b>BL# 862893954</b>																																																																							
<b>CONTRACTOR</b> <b>DAVID OPPENHEIMER CO (EC)</b> <b>262 CHAPMAN RD, BELLEVUE BLDG, SUITE, 204 NEWARK, DE 19702 U.S.A.</b> <b>PH:(302)533-0779 FX:(302)360-6013. CONTACT:TOM VERBITSKI, TOMVE@OPPY.COM</b>		<b>RECEIVER</b> <b>BARTHO INTERNATIONAL (EC)</b> <b>THE NAVY YARD, 5101 S. BROAD STREET,</b> <b>PHILADELPHIA, PA 19112-1404, USA</b> <b>CONTACT:BILL PAGAN</b> <b>PH:215-238-8600 FX:215-230-0570</b> <b>EMAIL:BFAGAN@OHLOGISTICS.COM</b>																																																																							
<b>FROM</b> <b>JENS MAERSK</b>	<b>TO</b> <b>Bartho International (EC)</b>	<b>FROM</b> <b>1114</b>	<b>TO</b> <b>1114</b>																																																																						
<b>PARTICULARS FURNISHED BY SHIPPER</b>																																																																									
<p>1 Container Sold to Contain 2160 BOXES</p> <p>20 PALLETS CONTAINING: 2,160 BOXES FRESH GRAPES AND TEMPERATURE RECORDORS 162684 AND 20279-B</p> <p>Export reference: Oppenheimer</p> <p>MNB0046617 ML-PE0120505 40 REEF 9'6 2160 BOXES 20130.000 KGS 34.000 CBM Temperature: -0.5 C Shipper Seal : 1QF0002303</p> <p>Goods carried under this bill of lading are subject to cold treatment for which charges will be charged. For such goods, carrier undertakes to exercise due diligence to provide properly approved containers and temperature measuring and recording devices. Carrier retains the right to complete cold treatment procedure if cold treatment has failed in the first instance and where the practical storage life of the commodity allows Carrier to complete cold treatment and Merchant agrees to take delivery of the container/commodity when the</p>																																																																									
<b>COPY</b>		<b>WEIGHT</b> <b>20130.000 KGS</b>	<b>EXPIRATION</b> <b>34.000 CBM</b>																																																																						
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<p>Shipped as per as ascertained by reasonable means of checking. In apparent good order and condition unless otherwise stated herein the total number or quantity of Containers or other packages or units indicated in the box opposite entitled "Container Receipt".</p> <p>Signed for the Carrier A.P. (User - Maersk Line as Master User)</p>																																																																									
<p>This transport document has one or more numbered attachments</p>		<p>Maersk Line Peru S.A.C. Agent(s) for the Carrier</p>																																																																							

B/L: 662093954

Attachment No.1 1/1

extended cold treatment has been completed. Further Merchant agrees to hold harmless and indemnify carrier for any and all consequences arising from or out of goods being carried at the applicable Protocol temperature.

Goods shipped in refrigerated container(s) set at shipper's requested carriage temperature as per above

SHIPPER'S LOAD, STOW, WEIGHT AND COUNT

FREIGHT COLLECT

"THE CARRIER DOES NOT ACKNOWLEDGE OR ACCEPT ANY RESPONSIBILITY OR LIABILITY WHATSOEVER FOR (16258-7 AND 16259-8) RECORDERS AND THE MEASUREMENTS REGISTERED BY THEM."

CY/CY

Item & Charge	Unit	Unit	Unit	Amount	Amount	Amount
Panama Transit Fee		200.00	Per Container			200.00
Port Security Charge - Import		5.00	Per Container			5.00
Carrier Security Charge		9.00	Per Container			9.00
Total USD			USD	185.00	6315.00	

## EXHIBIT 2

6650 Telecom Drive  
Indianapolis, IN 46278



**U.S. Customs and  
Border Protection**

JUL 11, 2013

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

David Oppenheimer & Co.  
c/o Chalos & Co, P.C.  
55 Hamilton Avenue  
Oyster Bay, New York 11771

To David Oppenheimer & Co.:

This is in response to the claim for property damage in the amount of \$23,421.47, submitted to U.S. Customs and Border Protection (CBP) pursuant to the Federal Tort Claims Act (28 U.S.C. 2671, *et seq.*) for property damage to a container of grapes, allegedly caused during a CBP inspection at the Port of Philadelphia on or about December 2, 2011. Your claim alleges that CBP “roughly handled” cartons containing the grapes and, as a result, the cartons “could not be stacked on pallets as intended, due to the damages sustained.” As a result, you claim that the grapes “failed to grade U.S. No. 1 account condition.”

In addition to your completed CBP Standard Form 95, “Claim for Damage, Injury, or Death,” CBP received the following documentation in support of your claim: 1) a Peruvian Phytosanitary Certificate for the grapes; 2) a survey report prepared by Philadelphia Cargo-Claim Consultants; 3) a Non-Negotiable Waybill for the container; and 4) an invoice for the sale of the grapes from IQF Del Peru S.A. to David Oppenheimer & Co.

We have given full consideration to the facts and circumstances of this incident and your claim is denied based upon the applicability of Sections 2860(a) and (c) of the FTCA.

Under the FTCA, the United States shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances. 28 U.S.C. §§ 1346(b) and 2674. The FTCA’s broad waiver of sovereign immunity is subject to several exceptions that are contained within 28 U.S.C. § 2680. One of the exceptions exempts the government from liability for “[a]ny claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.” 28 U.S.C. § 2680(c). Therefore, section 2680(c) bars recovery for any damage sustained during the detention of any goods or merchandise by CBP. In addition, the exception found in 28 U.S.C. § 2680(a) bars claims that are based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty on the part of a federal agency or government employee. The decision to perform a customs inspection on a particular cargo shipment, and the method of such inspection, is, as a matter of law and policy, left to the discretion of CBP and its officers.

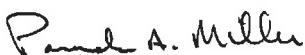
David Oppenheimer & Co.  
Page 2

It appears that the shipment of grapes was damaged either during a lawful CBP detention and secondary inspection, or during the re-packaging of the grapes by non-CBP personnel following the completion of a lawful CBP detention and inspection. In the case where the damage occurred during the lawful detention and inspection, 28 U.S.C. § 2680(a) and (c) both apply to exempt liability. There is no indication that CBP personnel acted negligently or recklessly, and even if they had, it is clear that the FTCA exemptions would still apply. In the alternative, CBP is not liable under circumstances where the damages are committed by non-CBP personnel and/or independent contractors under the Act.

If you are dissatisfied with this decision, you may file suit in an appropriate U.S. District Court not later than 6 months from the date of mailing of this decision letter. See 28 U.S.C. § 2401(b).

Should you have any questions regarding this matter, please contact Leslie Keyes in the CBP Office of Assistant Chief Counsel (Baltimore) at (410) 962-4610.

Sincerely,



Pamela A. Miller  
Director, National Finance Center